Daily Pacific News.

VOL. II.—NO. 179. SAN FRANCISCO, SATURDAY MORNING, FEBRUARY 22, 1851. WHOLE NO. 335.

THE PACIFIC NEWS
IS PUBLISHED EVERY MORNING,
BY WINCHESTER, [illegible] & CO.

TERMS—INVARIABLY IN ADVANCE.

TERMS OF ADVERTISING—IN ADVANCE.

For Half Square of 8 lines or less, 1st insertion......

For each renewal or change of a Monthly advertisement, [illegible]

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San Francisco, Montgomery [illegible]

Samuel Nicholson & Co. New Orleans,

BURGOYNE & CO.,
Bankers.

PAGE, BACON & CO.,
Bankers.

Draw at sight or on time, in sums to suit purchasers, on [illegible]

Deposits received, and Banking business generally [illegible]

ADAMS & CO.

WELLS & CO., Bankers.

FOR SALE.

LAW BOOKS AND STATIONERY.

FOR SALE.

50,000 [illegible]

COAL YARD.

SAN FRANCISCO PRICES CURRENT.

[illegible]

Rates of Commission, &c.

[illegible]

BUSINESS CARDS.

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Docteur Médecin de la Faculté de Paris.

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Auctioneers and General Commission Merchants.

EDMUND FILLET,
Commissioner to take Testimony for the County of San Francisco.

PARSONS & DRANE.

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Real Estate Agents, and Surveyors

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CROSBY & HILLMAN,
Attorneys and Counsellors at Law,

WHITING & FREELON, Counsellors at Law,

M. FREELON parle Français et Espagnol.

SMITH, WILLSON & TAYLOR,

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Lumber Dealer, North Beach.

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Auctioneer and Commission Merchant,

R. F. RYAN,
Attorney and Counsellor at Law,

WM. NEWELL,
Sexton and Undertaker.

JAMES McELRATH & CO.,

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Health Commissioner.

G. T. GILLESPIE,
Notary Public.

H. O'DONNELL,
Real Estate Broker and Notary Public.

WOODWORTH & MORRIS,
Shipping and Commission Merchants,

THE TOWN OF KLAMATH.

[illegible]

$500 REWARD.

[illegible]

COPARTNERSHIP NOTICES.

COPARTNERSHIP.

COPARTNERSHIP.

BOOK STORE.

LOTS FOR SALE.

Book and Job Printing.

MISCELLANEOUS.

PROSPECTUS
OF THE
MONTEREY GAZETTE.

THE UNDERSIGNED propose to publish in the city of MONTEREY, a Weekly Newspaper, to be called the MONTEREY GAZETTE.

In a country where, above all others in the world, newspapers constitute a necessary of life to the poor as well as to the rich, [illegible] of a newspaper, and we devote ourselves [illegible]

The GAZETTE is not designed as a party organ. [illegible]

The Commercial and Trading interests of Monterey [illegible]

STATE MARINE HOSPITAL.

IMPORTANT NOTICE.

SALE OF WATER LOTS.

DISTRICT COURT.

STORAGE.

LEGAL NOTICES.

STATE OF CALIFORNIA,
COUNTY OF SANTA CLARA: [illegible]

IN THE DISTRICT COURT,

IN DISTRICT COURT.

ADMINISTRATOR'S SALE.

IN JUSTICE'S COURT.

EXECUTOR'S NOTICE.

ADMINISTRATOR'S NOTICE.

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DAILY PACIFIC NEWS.

SATURDAY MORNING, FEB. 22, 1851.

AGENTS FOR THE PACIFIC NEWS.

Sacramento City............Col. Joseph Grant.
San Jose.............................Daily Argus.
Benicia...................................C. M. Davis.
New-York..............Thompson & Hitchcock.
Napa.....................................M. H. N. Kendig.

☞ AGENTS WANTED in every City, Town and Village, to whom liberal advantages will be given. Orders for the PACIFIC NEWS will be duly attended to, if addressed to us post paid, and enclosing the cash.

☞ The WEEKLY PACIFIC NEWS will be re-commenced as soon as necessary arrangements can be completed. A STEAMER EDITION will be issued semi-monthly, on the sailing of each Mail Steamer.

No Election of Senator Yet.

Up to Thursday night, when the Joint Convention adjourned to meet yesterday morning, *fifty-six* ballotings had been had for United States Senator, without resulting in a choice, or materially changing the position of the several candidates.

On the first ballot, Thursday morning, Mr. King had 18 votes; Mr. Heydenfeldt 13; Mr. Fremont 11; Mr. Weller 5; Mr. Geary 1. On the last ballot, after twenty had been had, Mr. King had 17 votes; Mr. Heydenfeldt 15; Mr. Fremont 11; John Cook 3; Mr. Weller 2; Mr. Geary 1. On two ballotings Mr. King received 20 votes, but did not go beyond it.

We add two or three of the ballotings to show how each member voted:

Thirty-sixth Ballot.—For Mr. King—Messrs. Douglass, Robinson of the Senate, Tingley, Woodworth, Baldwin, Bennett, Bodley, Bradford, Brown, Campbell, Carr, Cook of the House, Lisle, McDougal, Moore, Osgood, Thorne, Wethered and Wilkins—19.

For Mr. Heydenfeldt—Messrs. Green, Heydenfeldt, Miller, Van Buren, Hall, Kendrick, Lind, Merritt, Murphy, Richardson, Saunders, Yeiser, and Speaker—13.

For Mr. Fremont—Messrs. Adams, Cook of the Senate, De la Guerra, Lippincott, Carnes, Covarrubias, Kellogg, Pico, Randall, Robinson of the House, and Stearns—11.

For Mr. Weller—Messrs. Crosby, Warner, Field, Hoff and McCorkle—5.

For Mr. Geary—Mr. Broderick—1.

Forty-fifth Ballot.—For Mr. King—Messrs. Douglass, Robinson of the Senate, Tingley, Woodworth, Baldwin, Bennett, Bodley, Bradford, Brown, Campbell, Carr, Cook, Lisle McDougal, Moore, Osgood, Thorne and Wilkins—18.

For Mr. Heydenfeldt—Messrs. Green, Heydenfeldt, Miller, Van Buren, Field, Hall, Kellogg, Kendrick, Lind, Merritt, Murphy, Richardson, Saunders, Yeiser, Sparks—15.

For Mr. Fremont—Messrs. Adams, Cook of the Senate, De la Guerra, Lippincott, Carnes, Covarrubias, Hoff, Pico, and Stearns—9.

For Mr. Weller—Messrs. Crosby, Warren and McCorkle—3.

For Mr. Geary—Mr. Broderick—1.

For Mr. Collier—Messrs. Randall and Wethered—2.

For Col. Gift—Mr. Robinson of the Assembly—1.

Fifty-first Ballot.—For Mr. King—Messrs. Douglass, Tingley, Woodworth, Baldwin, Bennett, Bodley, Bradford, Brown, Campbell, Carr, Cook of the Assembly, Lisle, McDougal, Moore, Osgood, Thorne, and Wilkins—17.

For Mr. Heydenfeldt—Messrs. Green, Heydenfeldt, Miller, Van Buren, Hall, Kendrick, Lind, Merritt, Murphy, Saunders, Yeiser and Speaker—12.

For Mr. Fremont—Messrs. Adams, De la Guerra, Cook of the Senate, Lippincott, Warner, Carnes, Covarrubias, Field, Hoff, Kellogg, Pico, Randall, Richardson, Robinson of the Assembly and Stearns—15.

For Mr. Weller—Messrs. Crosby and McCorkle—2.

For Mr. Geary—Mr. Broderick—1.

For Mr. Redding—Mr. Robinson of the Senate—1.

For Mr. Collier—Mr. Wethered—1.

Fifty-Sixth Ballot.—For Mr. King—Messrs. Douglass, Tingley, Woodworth, Baldwin, Bennett, Bodley, Bradford, Brown, Campbell, Carr, Cook, of the Assembly, Lisle, McDougal, Moore, Osgood, Thorne and Wilkins—17.

For Mr. Heydenfeldt—Messrs. Green, Heydenfeldt, Miller, Robinson, of the Senate, Van Buren, Field, Hall, Kendrick, Lind, Merritt, Murphy, Richardson, Saunders, Yeiser and Speaker—15.

For Mr. Fremont—Adams, Cook, of the Senate, De la Guerra, Lippincott, Carnes, Covarrubias, Hoff, Kellogg, Pico, Robinson, of the Assembly, and Stearns—11.

For Mr. Cook.—Messrs. Warner, Randall and Wethered—3.

For Mr. Weller.—Messrs. Crosby, McCorkle—2.

For Mr. Geary.—Mr. Broderick—1.

Our San Jose Correspondence.

San Jose, February 21.

Editors of the Pacific News:

After twenty-one votings, yesterday, the Senatorial Convention took a recess, at 4½ o'clock, P. M., having refused to meet a third time, at seven o'clock, in the evening. The votes have been mostly concentrated upon King, Heydenfeldt and Fremont; the former ranging from 17 to 20, the second from 11 to 17, and the latter from 9 to 15.

The Convention meets again this morning at ten o'clock; but I am by no means confident of different results. Last evening, it is true, the friends of Mr. King were indulging hopes that Mr. Fremont's supporters would coalesce with them, and thus effect the election of the former. But this hope is probably not well founded. The friends of Mr. Fremont appear to prefer that the choice be delayed to a later day in the session; or even, that it be referred to the action of another legislature, chosen fresh from the ranks of the people.

This last, however, is not likely to take place. The ambition to elect a Senator, appears to be rife among the present legislators; and they are not likely to permit the opportunity to slip. The whole contest, it appears to me, well illustrates the fickleness of public opinion here. The phases of parties, and ties to party, here, change with every passing breeze. In fact, so few of the residents here are *free-holders*, so few in the Legislature, from the President of the Senate and Speaker of the Assembly, down to the individual members of both Houses, have a *local habitation* which may be called "permanent," that it is impossible to see them acting as would be expected of men in the older States.

I do not intend to make charges against any one on this account. It is, I suppose, an inevitable consequence of things in a new country. We are choosing, in electing a Senator, one who is to legislate as well for the common country, as for California; and hence, if for no other reason, should we go for an able, honest and experienced Union man—one who knows the whole *Union* of the States and one who loves them all. Such a man is Col. Fremont, and after him Thos. Butler King. By either of them California would be well represented in the highest body of the national legislature; and by either would all other parts of the great republic be cared for.

C. M. B.

The Steamer "Confidence." — This splendid new river boat starts on a pleasure trip to Sacramento this morning, at 9 o'clock, and will carry a large party who will improve this opportunity to make a trip up the river by day-light.

The Confidence is a magnificent boat, is manned by as gentlemanly a set of officers as ever trod a deck, and managed by as upright and popular agents as can be found in California. The traveling public will greet her appearance with favor, as it offers a prospect that the monopoly which has grown fat from the necessities of the public, will be effectually checked in the future. We shall be disappointed if the "Confidence" does not become one of the most popular boats on the river. Vassault & Co. are the Agents in this city.

The Supreme Court U. S. on Spanish Land Titles.

Editors of the Pacific News:

I enclose you a number of the *Daily Tribune*, containing the decision of the Supreme Court of the United States in the case of Maxwell *et al. vs.* Massey, in error to the District Court of the United States for Missouri, with the opinion of Mr. Justice Catron.

The opinion of Mr. Justice Catron, contains a brief history of the policy pursued by the Congress of the United States, and the action of the Boards of Commissioners which have been appointed at various periods to investigate, report upon, or adjudicate the claims to lands in the former territory of Louisiana, extended by the Spanish and French governments, and the principle on which their decisions have been based.

It is a matter of great interest at the present moment, that the citizens of this State should inform themselves fully of their rights and refrain from the commission of wrongs, which can only result most unfortunately for the parties concerned, retard the prosperity and progress of the State, and engender a strife and animosity which will continue to prove, as it has already shown itself, a source of anarchy, riot and bloodshed. That there are many lands now held in this country by titles that are defective, and others by pretended titles that can never be perfected, there is not a doubt; but this fact will not justify an indiscriminate condemnation of lands held by titles under the former government, even where they have not been fully perfected, because where there are equities existing, they are bound to be respected; nor will it justify, on the other hand, the acts of those who attempt by pretended titles, to rob the public domain, which, *under the law*, is the property of every American citizen, of that which rightfully belongs to it.

In a law-abiding country, for the preservation of peace, it is the duty of every good citizen to act consistently on this subject, and he cannot do so unless he shall inform himself fully of the principles on which his government has acted in the adjudication of like cases, as well as of the particular condition of the case in which he proposes to act.

I think the publication of this opinion at this time will have the salutary effect of quieting much excitement, of leading our fellow citizens to reflect before they act, and avoid collisions that will entail upon us a litigation which will impoverish the country, prevent emigration, seriously impede its prosperity, and destroy the harmony of society.

CIVIS.

SUPREME COURT OF THE UNITED STATES.

December Term, 1849—No. 24.

Andille Maxwell, Peter Menard, Bernice Chouteau, George H. Kennedy, and Alsire, his wife, Edmund Menard, Lancia Menard, Cyprian Menard, John Badford, and Sophia, his wife, heirs of Amedee Menard, demandants and plaintiffs in error, *vs.* Samuel Massey:

In error to the Circuit Court of the United States, for Missouri.

Mr. Justice Catron delivered the opinion of the Court:

On the 5th of November, 1799, Pascal L. Cerre petitioned the Lieutenant Governor of Upper Louisiana for a concession of land, in two parcels in full property, one half of which, or three thousand five hundred and twenty-eight arpens, to be taken at a place known by the name of the Great Source of the river Marame, at about three hundred miles from its mouth; the other half, or thirty five hundred and twenty-eight arpens, at some distance from the first, at the upper part of the head waters of the Gasconade, and of those of the Fork of the Maramee, known by the name of La Bourbeuese, or Muddy. To gratify this petition, the Lieut. Governor made the following concession:

St. Louis, of Illinois, Nov. 8, 1799.

"Whereas, The petitioner is one of the most ancient inhabitants of this country, whose known conduct and personal qualities are recommendable, and being convinced of the truth of what he exposes in his petition, I do grant the patitioner the land which he solicits; and as it is situated in a desert where there is no settlement, and at a considerable distance from this town, he is not compelled to have it surveyed immediately, but as soon as some one settles on said place, in which case he must have it surveyed without delay; and Don Antonio Souland, Surveyor General of this Upper Louisiana, will take cognizance of this title for his own intelligence and government in the part which concerns him, so as to enable the interested, after the survey is executed, to solicit the title in due form from the Intendant General of these provinces of Louisiana.

"CARLOS DEHAULT DELASSUS."

"Registered by order of the Lieut. Governor, pages 15 and 16 of Book No. 1, Titles of Concessions.

"SOULARD."

This claim was laid before the First Board in the following form:

"September. 15. 1806.

"Pascal L. Cerre, claiming a tract of a league square, to be surveyed in two parts or halves, the one on the big spring of the river Marame, so as to include said spring, and the other at the fall of the Forks of the Gasconade and those of the Marame, called the Muddy, produces a concession from Charles Dehault Delassus, dated 8th November, 1799."

That Board, (September 28, 1810,) were of opinion that the claim ought not to be confirmed; and so reported to Congress. And thus the claim stood until October 31, 1833, when it was presented to the Second Board, created by the act of 1882; and this Board was of opinion, and reported to Congress "that the claim ought to be confirmed to Pascal L. Cerre, or his legal representatives, according to his concession." And by the Act of July 4, 1836, Congress confirmed the claim according to the report, and consequently, according to the unsurveyed concession.

The township, including "the big spring of the river Marame," was offered for sale on the third Monday of November, 1823, pursuant to the proclamation of the President. Whether Massey and James purchased at the public sale in 1823, or entered afterwards, does not appear from the record; but in 1826 and 1827 they obtained their different patents for the land in dispute, from the United States; and these titles, the Court below charged the jury, were superior to Cerre's confirmed claim; and here the question arises, whether Cerre's concession, on being confirmed by Congress in 1836, related back to its date of 1799, and overreached the United States' title made to Massey and James. If it does so relate, to the extent of the survey made under the confirmation in 1838, and approved in 1840, then the controversy is at the end; and as, on this assumption the suit was brought, it becomes necessary to examine the question of relation of title. The argument is, that the concession was made by an officer who had power to grant; and having done so, the land granted was "property," and protected by the third article of the treaty of 1803, which declares that the inhabitants of the ceded territory shall be maintained and protected in the free enjoyment of their liberty and property; and that the laws of nations, equally with the stipulation of the treaty, secured the title of such grantees.

That the Lieutenant Governor of Upper Louisiana had the authority, as a sub-delegate, under the Intendant General of the provinces of Upper and Lower Louisiana and Florida to make concessions, is undeniable; he could, and did deal with the public domain of the provinces, made concessions, directed the lands to be surveyed, and caused grantees to be put in possession. This, however, does not settle the question. It does not depend upon the existence of power, or want of power in the Lieutenant Governor, but on the force and effect of the right his concession conferred. Did it give such a vested title in the soil, that the Spanish government could not legally disavowed it? Or, could the Intendent General, representing the royal authority, lawfully refuse to confirm the concession, and order the grantee to be turned out of possession? If it be true, that the title ended with the concession, survey, and occupancy of the land granted, then, it follows, that the title was completed and perfected under the Spanish laws, by these acts; nor was a confirmation from any higher power than the Lieutenant Governor at all necessary; the grantee having all the title that the King could give. The assumption, that such was the Lieutenant Governer's power, and the force and effect of the title, sets out with the assertion, that neither the regulations of Morales, nor any previous regulations of the Spanish Governors, were ever in force in Upper Louisiana, and that the act of the Lieutenant Governor was conclusive as to law and fact when making grants; that he could grant to any one, for any quantity, and for any reason, or without reasons, and on any condition, or without conditions; and that no authority existed to supervise his acts; and we are referred to various expressions and conjectures on the subject. In the case of Soulard and Smith T., against the United States, (in 4 Peters) this court, after holding the case under advisement for a year, professed itself unable, from want of information, to give any opinion in any matter; and for this reason, the cases were not decided. This occurred in 1830. In 1835 and 1837, in the cases of Clarke, Delassus, and two of Choteau's heirs, found in 8th and 9th Peters, regulations for the government of sub-delegates are admitted to have existed, but not to such an extent as to control the Lieutenant Governors in regard to person, quantity or reason, when making concessions and orders of survey; and such has been the doctrine of this court since that time, so far as concessions in Upper Louisiana have been adjudged. These cases address themselves to a single consideration; that is to say, whether the Lieutenant Governor's were so limited that the concessions then before the court were void for want of power; but they do not settle the question, that the grant was a perfect title. It is said by the court, in the case of Choteau's heirs, (9 Peters, 154.) "It is remarkable, that if we may trust the best information we have on the subject, neither the Governor nor Intendant General has ever refused to perfect an incomplete title granted by a deputy Governor or sub-delegate." In point of fact this is certainly true. No such refusals could take place. From the parts of Upper Louisiana, where grants were made, to New Orleans, where the Intendant General and Governor-in-chief resided and kept their offices, the distances were so great and the trackless wilderness between, so infested with hostile Indian tribes, that few could apply, had they possessed the means to pay for perfecting their titles. And, in the next place, their standard of value and medium of exchange was skins; these were a lawful tender in payment of debts in the Upper provinces; specie was hardly known; and then again, land was of no material value to such a population, who resided in villages, and cultivated patches within a common fence, where each inhabitant had his portion assigned him by a syndic. But two instances are known to exist in Upper Louisiana, where the Indendant was applied to for a complete title, and made the same; one case was that of Moses Austin, for a league square, at Mine a Breton, a report on which is found in 2 *American State Papers*, 678, and the other perfected title was made to Mr. Reigh, in the neighborhood of St. Louis.

The fact, therefore, that the Intendant Generals and Governors did not refuse to make perfect titles, is no evidence that they had not the power to deal absolutely with concession made by sub-delegates, and to give titles or refuse them as the Congress of the United States has done. Like Congress, they exercised the sovereign power. The concession before us addresses itself to the Intendant General, and refers the grantee to him, "to solicit the title in due form," as do uniformly, all the concessions and orders of survey made by Lietenant Governors, after the Intendant was restored to power. By the 81st article of the Royal Ordinance providing for Intendants of New Spain, (2 *White Recop*, 69, 91.) such Intendants were made the peculiar judges of causes and questions arising in their respective districts, relating to the sale, distribution, and grant of royal lands; and a dispute having arisen in 1799, between Morales, Intendant and interim, and Don G. De Lemos, Governor of Louisiana, respecting the exclusive right claimed by the former to control such grants, (*see Idem* 469, *et seq.*,) the Royal order of 22d October, 1798, was issued, reaffirming this 81st article, and declaring the power of the Intendant to the plenary, and in conclusion of all other authority, to divide and grant all kinds of lands belonging to the crown. (*Idem*, 245, 877.) Acting under and by virtue of these two royal orders, the Intendant, Morales, on the 17th of July, 1799, published his regulations, addressed to the Lieutenant Governors, sub-delegates, and to the people of the provinces of Lower and Upper Louisiana, and West Florida, so that those who wished to obtain lands might know in what manner to ask for them, and on what conditions they could be granted and sold. "And especially, (in his own language,) that those who are in possession without the necessary titles may know the steps they ought to take to come to an adjustment; that the commandants and sub-delegates of the Intendancy may be informed of what they ought to observe." He then states that a great number of those who have asked for land think themselves the legal owners of it; those who have obtained the first decree, by which a surveyor is ordered to measure and put them in possession; others, after a survey has been made, have neglected to ask for "*a title to the property*," and as like abuses, continuing for a longer time, will augment the confusion and disorder which will necessarily result: "We declare that no one of those who have obtained said decree, notwithstanding, in virtue of them, the survey has taken place, and that they have been put in possession, *can be regarded as owners of the land, until their real titles are delivered, completed with all the formalities before recited*. The foregoing is an extract from the 18th article of the regulations of July, 1799, which regulations had the force of written law up to the time when a change of government took place. The formalities for completing a real title are prescribed by the three articles preceeding the 18th; the surveyor was bound to forward to the Intendant a survey, and also a copy of the survey, or rather a figurative plot, and a certificate called a process-verbal, signed by the commandant, or syndic, and two neighbors, together with the surveyor, declaring that the survey was made in their presence, and correspond with facts stated in the process-verbal; and on the concession, this figurative plot and the process-verbal, the complete title was founded; a copy of the plot and process-verbal being attached; and which evidence of title was recorded in several departments. Such, in substance, was the real title completed. The necessity of a further title, than a mere loose order of survey, given by commandants of posts and Lieutenant Governors, and placed in the hands of the interested party, is too manifest for comment. Petitions were written by the party asking the land, or some one for him; the Governor consented, usually by endorsement on the petition, and ordered that the petitioner should have the land, and directed that it should be surveyed; the paper was handed to the petitioner, who might deliver it to the surveyor, or omit it; if he presented it, and the land was laid off, then it was the surveyor's duty to record both the concession and plot, together with the process-verbal. But this did not make the party owner, without the further act of the King's deputy, the Intendant General; the title still continued in the Crown.

As assumed in argument (and truly) by the third article of the treaty by which Louisiana was acquired, and by the laws of nations, the inhabitants of the ceded territory were entitled to be maintained and protected in the free enjoyment of their property. But in what property? To such an interest in it, if land, as they had when the country changed owners; and that interest being of a character requiring royal sanction before the Spanish government would recognize it as divesting the public title, our government, as the successor of Spain to the public lands, gave the same construction and effect to concessions and orders of survey; holding that the title of the King's domain passed by treaty to the United States, notwithstanding the existence of such concessions; yet, to the full extent of any equity in the claimants, the government adopted means to satisfy the claims; and as the sovereign power could not be sued as legal owner. Boards of Commissioners were created, with liberal powers, to investigate every description of claim, and report on them to Congress, for the sanction of sovereign authority; and by this means many claims were confirmed, the legal title added, and the incipient concession completed into a perfect and conclusive title against the government. Then again, Congress provided that special courts should be organized, in which the government might be sued, in a prescribed form, and decrees be made for or against claimants, but no suit could be maintained in an ordinary action of ejectment, or for title of any kind, on a concession and an order of survey, for want of legal title to sustain it. Such claimants "were not regarded as owners of land, until the real title was delivered completed," in the language of the Spanish regulation, No. 18. Had the courts of justice been allowed to hold them otherwise, and to interfere in the matter, and to decree titles to claimants in equity, or to enforce their claims at law, and oust the United States indirectly by suing persons found on the land, little or no occasion would have existed for Boards or special courts to adjudge respecting the validity of claims, as the ordinary tribunals could have settled all controversies under State laws declaring such claims cognizable in the State courts. It was therefore manifest that claims resting on the first incipient steps, must depend for their sanction and completion upon the sovereign power; and to this course, claimants had not just cause to object, as their condition was the same under the Spanish government. No standing, therefore, in any ordinary judicial tribunal has ever been allowed to these claims until Congress has confirmed them and vested the legal title in the claimant. Such undoubtedly, is the doctrine of our legislation. To go no further: the act of May 26, 1824, allowing claimants a right to present their claims in a court of justice, pronounces on their true character. It declares that the claim presented for adjudication must be such an one as might have been perfected into a complete title, under and in conformity to the laws, usages, and customs of the government under which the same originated, had the sovereignty of the country not been transferred to the United States; and by the 6th section, when a decree is had favorable to the claim, a survey of the land shall be ordered, and a patent shall issue therefor; and by section 11, "if the decree shall be in the claimant's favor, and the land has been sold by the United States, or otherwise disposed of, the interested party shall be allowed to enter an equal quantity of land elsewhere." So again; the act of July 9, 1832, creating the last Board, directs the Commissioners to inquire into and examine all unconfirmed claims previously filed, found on any incomplete grant, concession, warrant, or order of survey, issued by the authority of France or Spain, and to class the same so as to show: *First*, What claims, in their opinion, would in fact have been confirmed according to the laws, usages, and customs of the Spanish government, and the practice of the Spanish authorities under them "at New Orleans," if the government under which said claims originated had continued in Missouri; and, *Secondly*, What claims, in their opinion, are destitute of merit under such laws, usages, and customs. And by section 3, it is declared that from and after the final report of the Commissioners, the lands of the second class shall be subject to sale, the same as other public lands; and that those of the first class shall continue to be reserved from sale, as heretofore. From the first act, passed in 1805, up to the present time, Congress has never allowed to these claims any standing, other than that of mere orders of survey and *promises* to give title, and which promises addressed themselves to the sovereign power in its political and legislative capacity; and which must act, before the courts of justice could interfere and protect the claim. And so this Court has uniformly held. The title of Cerre having no standing in court before it was confirmed, and cannot relate back so as to overreach the patents made in 1826 and 1827.

The next ground relied on to reverse the decision of the Circuit Court is, that Cerre's claim was reserved from entry and grant by the act of March 3, 1811, providing for the sale of public lands and the final adjustment of land claims. The 5th section declares that back lands to front grants on the Missisippi river, &c., are reserved from sale; and by section 6, it is provided, that until after the decision of Congress thereon, *no tract of land* shall be offered for sale, the claim to which has been in due time, and according to law, presented to the register of the land office, for the purpose of being investigated by the Commissioners appointed for ascertaining the rights of persons claiming lands in the territory of Orleans. The 8th section declares that the Surveyor General shall cause such lands in the Louisiana territory, as the President shall direct, to be surveyed, like other public lands; offices are established for their disposal, and it is directed that they shall be sold by order of the President: But from this power to sell, are excepted section number 16, salt springs, lead mines, with such lands adjoining thereto as the President shall direct; and then comes the exception relied on for the protection of Cerre's claim, to wit: "That till after the decision of Congress thereon, *no tract* of land shall be offered for sale, the claim to which has been, in due time, and according to law, presented to the recorder of land titles in the district of Louisiana, and filed in his office for the purpose of being investigated by the Commissioners appointed for ascertaining the rights of persons claiming lands in the territory of Louisiana." [*See Land Laws*, 194.]

That this provision is an exception to the general powers conferred on the officers to sell, is not an open question; having been so adjudged by this Court, in the case of Stoddard's Heirs, *vs.* Chambers, reported in 3d Howard; and again at the present term, in the case of Bissell *vs.* Penrose. Nor is it an open question that the act of February 17, 1818, section 3, re-enacts and continues in force the exception as respects such lands—this was also decided by the above cases; and that such was the opinion of Congress, is manifest from the third section of the act of July 9, 1832, under which the last Board acted; for it declares, that lands of the first class shall be reserved from sale "as heretofore."

All these acts of Congress, with their exceptions, address themselves especially to the department of public lands, as by them that department must be guided. In reserving lands from sale, it was necessary to know where they were situated, and how far they interfered with the public surveys. Either the President or some other officer must have had the power to designate the lands, as those adjoining to salt springs and lead mines; or, it must have appeared in some public office appertaining to the land department what the boundaries of reserved lands were; and if it did not appear, no notice of the claims could be taken by the surveyors, nor by the registers and receivers, when making sales. This was a conclusion that has from necessity been acted on at the land offices; and as Cerre's claim was not surveyed before the confirmation took place, no boundaries of his tract could be recognized when the public surveys were made and the lands sold. He claimed no "tract of land." The laws refer to specific tracts that are claimed; it is not material whether the boundaries are proper, and according to the concession, or the claim be just or otherwise, so that the tract claimed be certain. This was also decided in the cases just cited; certainly, a mere floating claim founded on a concession that was ordered to be located by survey, and where no survey or location had been made, was not protected by the act of 1811. An actual survey is not indispensable, but boundaries must appear in some form, from the notice of claim, and the accompanying evidences filed with Recorder. If, from these, the tract could not be laid down on the township surveys, then the land could not be reserved from sale; although by the concession, and by the notice, a particular spot, (as the Big Spring of the Marmee,) was referred to in general terms as the place where the land should lie.

But there is another ground of defence, that would have been conclusive, even had Cerre's claim been surveyed, and the survey filed with the Recorder in 1806, accompanying the notice of claim. By the second section of the confirming act of July 4, 1836, it is provided, that "if it shall be found that any tract confirmed by this act, or any part thereof, had been surveyed and sold by the United States, this act shall confer no title to such lands in opposition to the rights acquired by such location or purchase; and the party whose claim is confirmed by this act, shall be authorized to enter a quantity of land equal to the interference elsewhere."

Having seen that the United States might confirm the claim of Cerre, or might refuse to do so, and that it took date as a title recognized in the judicial tribunals from the confirming act, it follows that the claim might be confirmed in such part, and on such considerations as Congress saw proper to prescribe; and having refused to confirm it for lands lying within its boundaries, which it had previously sold, and the patents to Massey and James being of this description, they are the only legal title to the land; and therefore, the charge of the Circuit Court was proper.

The survey of Cerre's tract, founded on the confirmation, was given in evidence, and recognized as part of his title by the Circuit Court, which circumstance we deem it proper not to pass without notice. By the act of April 26, 1816, it was provided, that a surveyor should be appointed of the public lands for the territories of Illinois and Missouri, whose duty it should be to cause so much of the lands in said territories as the President should direct to be surveyed, and divided as were the public lands lying northwest of the river Ohio; and the act declares that "it shall also be the duty of the surveyor to cause to be surveyed the lands in said territories, the claims to which have been, or hereafter may be confirmed by any act of Congress, which have not already been surveyed according to law; and he shall transmit to the registers of the land offices in said territories, general and particular plats of all the lands surveyed or to be surveyed, and shall also forward copies of said plats to the Commissioners of the General Land Office; and all the plats of surveys, and all other papers and documents, pertaining, or which did pertain, to the office of Surveyor General under the Spanish government, within the limits of the territory of Missouri, &c., shall be delivered to the surveyor appointed under this act." "And any plat of survey, duly certified by said surveyor, shall be admitted as evidence in any of the courts of the United States, or the territories thereof." Under this authority, Cerre's claim was surveyed, as will better appear by the following certificate, preceding the description of the lines:

"Plat and description of the survey of a tract of 3528 French arpens, equal to 3001 and twenty-five hundredths English acres of land, situated in township 28 north, range 5 west, and townships 37 and 38 north of the base line, range 6 west of the 5th principal meridian, in the State of Missouri, executed from the 18th to the 20th of June, 1838, by Joseph C. Brown, deputy Surveyor, under instructions from the Surveyor of the Public Lands in the States of Illinois and Missouri, dated the 6th of June, 1838; it being the one half of 7056 arpens, or a league spuare, granted in two tracts of an equal quantity, on the 18th of November, 1799, to Pascal L. Cerre, by Zenon Trudeau, Lieut. Governor of the Spanish Province of Upper Louisiana; this tract 'to be taken at the place commonly known by the name of the great source of the river Marame, at about three hundred miles from its mouth, so as to include the said sources;' and confirmed to Pascal L. Cerre by the act of Congress of the United States, approved on the 4th of July, 1836, entitled 'an act confirming claims to land in the State of Missouri, and for other purposes,' according to the decision No. 2, of the report of the Board of Commissioners appointed by the act of Congress approved on the 9th of July, 1832, entitled 'an act for the final adjustment of private land claims in Missouri,' and the act of Congress approved the 3d of March 1833, supplemental thereto."

The Surveyor General approved the survey, June 20, 1840. In having the land laid off, and approving the survey, he acted under the authority of Congress, expressly conferred by the act of 1816. Joseph C. Brown testified that he made this survey, being the same offered in evidence above: that the survey was made at the time stated on its face, and was made by the witness, at the place known and called "the Big Spring of the Marame;" that the said spring was on section one, as marked and designated on the map before him. The Big Spring was a very large body of water, breaking out of a high bluff, and made a stream from the spring itself of about one hundred feet wide, and a foot in depth; that witness made the survey by direction, and under the authority given to him by the Surveyor General of the United States, at St. Louis. Witness further stated, that the survey was made according to Mr. Cerre's directions, and in obedience to the instructions given to him by the Surveyor General; Mr. Cerre made no particular reconnoissance of the ground, although personally present, but took the land as it came, and it was made by the Surveyor at the particular place indicated, the Big Spring, as the source of his claims. Witness stated further, that the instructions from the Surveyor General were printed instructihns, of which a copy is set out. Among numerous and detailed instructions referred to by the witness, there are the following:

"Information given to you by a claimant or his agent relating to the situation of a claim, will govern your operations, provided you believe from all the circumstances which come to your knowledge, that such information is correct; and provided also, that it does not contradict the papers with which you may be furnished. The position of any point or place called for in a concession, and also of the settlement or improvement in virtue of which a settlement claim is confirmed, must be stated in your field notes. The survey of claims which are confirmed unconditionally, according to a former survey, will conform thereto, regardless of any excess or deficiency in quantity, provided the old lines and corners can be found and properly identified; in which event, the old corners will be run to, and the true courses and lengths of the several lines according to your operation, will be correctly stated in your field notes; and if the old lines and corners cannot all be found, you will conform to the old survey as near as practicable, by running the courses and distances called for, or to the intersection of the proper lines as may be required, making the necessary allowance for the difference in the variation of the needle.

"2. The surveys, or claims which are confirmed according to an old survey, but are restricted in quantity, will be surveyed as above directed, for those not restricted, except that if there is any excess or deficiency, it will be thrown off, or taken in a line parallel to that old line of the survey, which the claimant may direct; or if he fails or declines to give directions, throw off the excesses, or take in the deficient quantity, on the side which you think will best promote his interests; being careful to note all the particulars relating thereto in your field book, and give the position of the old lines and corners which may be abandoned because of the excess or deficiency in quantity.

"3. Claims which are confirmed according to the concession, and have been legally surveyed in conformity therewith, except as to exactness in quantity, will be re-surveyed as the class of cases above mentioned.

"4. If the survey heretofore executed of a claim which is confirmed according to a concession, whether the concession is, or is not, special as to locality, but is special as to the direction of the lines, the proportional length of the different sides, or the figure of the survey to be made in virtue thereof, does not conform to these requirements of the concessions, the said survey will be altogether disregarded, except so far as it may be useful in cases where the concession is not special as to locality, in identifying the situation of the intended concession to be confirmed, unless the survey was executed and approved by the proper Spanish officer, prior to the transfer of the country to the United States; in which event, the survey will be considered as evidence of the changed intention of the authority making the concession, and will be taken as a part and parcel thereof.

"Claims which are confirmed according to special concessions, and which have not been surveyed, you will survey in strict accordance with the terms of the concessions; always bearing in mind, that where there are no special requirements in the concession, it was the general practice of the government with which the claims originated, to run them either in squares or in right angled parallelograms of 1, 5, 10, or some intermediate, or greater number of arpens, by 40 or 80, according to the size of the tract, or double as long as wide, unless some other survey or grant intervened, and rendered a departure from this rule unavoidable; in which case, the rule was only so far departed from as was necessary to get rid of the interference with prior surveys."

Cerre's claim was of the last class The land was directed to be surveyed according to his directions; the surveyor having regard to the last (and 5th) instruction, with the exception, that the special spot called for in the concession, was required to be laid down and noted in some part of the survey. When it was made, and the field notes returned to the Surveyor General's Office, and the description and plat made out in form, and approved by the Surveyor General, it was conclusive evidence, as against the United States, that the land granted by the confirmation of Congress was the same described and bounded by the survey; unless an appeal was taken by either party, or an opposing claimant, to the Commissioner of the General Land Office. This consideration depends on the facts that the claimants and the United States were parties to the selection of the land, for, as they agreed to the survey, they are mutually bound and respectively estopped by it. But private claimants of lands within its boundaries, who were no parties to the survey, are not estopped, and may controvert its conclusiveness, so far as their claims interfere with the lands thus selected by the party, and which were laid off to him by the United States. We are not called upon to say, nor do we wish to be understood as intimating what retrospective date the confirmation by Congress of land thus surveyed relates, so as to overreach a claim by purchase from the United States, further than the case before us requires, which is, that lands purchased before the act of July 4, 1836, was passed, are protected against the confination made by that act, in this instance.

For the reason stated we order the judgment of the Circuit Court to be affirmed.

Masked Ball.—The lovers of pleasure will bear in mind that another mask ball comes off in the Exchange this evening. Butler has made a splendid large lithograph of one of these fancy entertainments, which is true to the life.

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Recorder's Court.—The Court was yesterday mainly engaged in the investigation of the case of Charles Duane, charged with shooting M. Fayolle. Four or five witnesses were examined, and the case then summed up by Calhoun Benham for the defence, the counsel for the people declining to address the court, evidently feeling confident that sufficient evidence had been offered by the state to bind the defendant over. The Recorder after a few remarks on the merits of the evidence, decided to hold the defendant for his appearance before the District Court in the sum of $15,000.

Shortly after the adjournment of the court, Geo. W. Thompson, Wm. Devoe and F. D. Kohler, entered the required security, and Duane was set at liberty.

We were in error in saying that Mr. Fayolle, the man shot by Duane, had died. He was alive last evening, but is not expected to recover.

Washington's Birthday.—To-day is the birthday of Washington—freemen will not forget it.

We received Sandwich Islands papers yesterday by Gregory's Express.

MARRIED.

[illegible]

San Francisco Stock Exchange.

[illegible]

Arrivals at Hotels.

[illegible]

MARINE NEWS.

Cleared.

Ship Columbia, Sibley, Manila.

Arrived.

[illegible]

BUSINESS NOTICES.

[illegible]

AUCTION SALES.

EMERSON & DUNBAR.

EMERSON & DUNBAR [illegible] Regular days of sale, TUESDAY, THURSDAY and SATURDAY.

TO-DAY.

THIS DAY, Saturday, February 22, at Sales Room. [illegible]

ON TUESDAY.

25 cs French and American paper hangings [illegible]

20 casks assorted cut nails [illegible] from fencing [illegible]

COBB & CO.,

Auctioneers and Commission Merchants.

TO-DAY.

100 bxs French [illegible] and 100 lb bxs [illegible]

AUCTION SALES.

JOHN MIDDLETON, Auction'r.

A CARD.—The Auction and Commission business will be continued [illegible]

JOHN MIDDLETON, Auctioneer.

REGULAR SALES [illegible]

On MONDAYS, Catalogue Sales of Boots, Shoes and Clothing.

On WEDNESDAYS and FRIDAYS, Cargo Sales of Groceries, Liquors and Staple Goods.

Large Catalogue Sale of Boots, Shoes, Brogans, Blankets, Dry Goods, Clothing, California Hats, &c.

On MONDAY morning, Feb. 24, 1851 at 10 o'clock, [illegible]

CALIFORNIA HATS—[illegible]

CLOTHING—[illegible]

1 fancy Cashmere and assorted colored do

BLANKETS—[illegible]

HENRY B. LAFITTE & Co.

[illegible]

TO LET, LEASE & FOR SALE.

[illegible]

STEAMERS.

REGULAR SEMI-MONTHLY STEAMER.

FOR MONTEREY, SANTA BARBARA, SAN PEDRO and SAN DIEGO, on SATURDAY, March 1st, 1851, [illegible] CONSTITUTION, [illegible]

No freight will be received on the day of sailing.

PACIFIC MAIL STEAMSHIP COMPANY.

CONNECTING with the U. S. Mail steamers Cherokee and Philadelphia, at Chagres.

The Pacific Mail Steamship Company's steamer CALIFORNIA, [illegible] will leave for PANAMA, touching at the usual ports, on SATURDAY, March 1, [illegible]

FARE REDUCED.

LAW'S LINE PACIFIC STEAMERS.

THE ONLY DIRECT LINE FOR New York and New Orleans. [illegible]

FOR GOLD BLUFF.

TRINIDAD and HUMBOLDT BAYS. [illegible]

FOR STOCKTON.

[illegible]

FOR SANTA CLARA

[illegible]

FOR SAN JOAQUIN CITY.

[illegible]

FOR SAN JOSE, SANTA CLARA & ALVISO.

[illegible]

CARGO OF BRIG TOBIAS.

[illegible]

SHIPPING.

KLAMATH RIVER.

[illegible]

CALLARD'S LINE.

FIRST VESSEL FOR PANAMA, DIRECT.

[illegible]

FOR SANTA CRUZ, MONTEREY,

[illegible]

WOODWORTH & MORRIS.

TO LET.

FOR A STORE VESSEL [illegible] 200 tons suitable for storing [illegible]

FOR SALE.

[illegible]

CAUTION.

[illegible]

NOTICE TO SHIPMASTERS and OWNERS.

[illegible]

EXPRESSES.

[illegible]

GREGORY'S EXPRESS.

[illegible]

TODD & CO'S EXPRESS.

[illegible]

DODGE & CO'S EXPRESS.

[illegible]

NEW ARRANGEMENTS.

[illegible]

BALDWIN & CO.

[illegible]

RESTAURANTS.

CENTRAL HOUSE,

WASHINGTON STREET,

BY U. A. MANSFIELD & E. S. POTTER.

BILL OF FARE.

DINNER.

[illegible]

Wines and Liquors of all kinds.

LODGINGS WITH OR WITHOUT BOARD.

CENTRAL HOUSE,

Between Washington and Merchant streets.

[illegible]

WOOD AND COAL.

[illegible]

CALIFORNIA FLOWER SEEDS.

[illegible]

OREGON LAND

[illegible]

GUADALUPE MINING COMPANY.

[illegible]

FOUR NATIONS RESTAURANT.

[illegible]

VALENTINES! VALENTINES!

[illegible]

JUST RECEIVED.

[illegible]

NOTICE.

[illegible]

PUBLIC NOTICE.

[illegible]

GOLD DUST

[illegible]

A GREAT CHANCE FOR COLLIERS.

[illegible]

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STATE LAWS.

AN ACT to Establish Pilots, and Pilot regulations for the Port of San Francisco.

[illegible]

JOHN BIGLER,
Speaker of the Assembly.
[illegible]
Lieut. Gov. and President of the Senate.
Approved, February [illegible], 1850.
PETER H. BURNETT.

AN ACT regulating the Quarantine of Vessels at the Port and Harbor of San Francisco.

[illegible]

§2. Every vessel in this act directed to be subject to quarantine, shall immediately on her arrival, proceed to and be anchored at the place there assigned for quarantine [illegible]

[illegible]

§[illegible]. Such offender shall also be detained at quarantine so long as the Board of Health shall direct, not exceeding ten days, unless he shall be taken sick of some pestilential [illegible]

[illegible]

PETER H. BURNETT.

AN ACT providing for the erection of a Marine Hospital for the State of California.

[illegible]

PETER H. BURNETT.

AN ACT Creating Officers of Health for the Port of San Francisco and Defining their Duties.

[illegible]

PETER H. BURNETT.

W. VAN VOORHIES,
Secretary of State.

AN ACT to provide for the Liens of Mechanics and Others.

[illegible]

JOHN BIGLER,
Speaker of the Assembly.
[illegible]
Approved, April [illegible], 1850.
PETER H. BURNETT.

W. VAN VOORHIES, Secretary of State.

AN ACT Prescribing the Mode of Appointing Auctioneers, and Defining their Duties.

[illegible] ... in auction sales shall be liable to the duties hereinafter enumerated [illegible]

STATE LAWS.

[illegible]

JOHN BIGLER,
Speaker of the Assembly.
[illegible]
Approved, April [illegible], 1850.
PETER H. BURNETT.

WM. VAN VOORHIES,
Secretary of State.

AN ACT providing for the collection of Demands against Vessels and Boats.

[illegible]

3. Any person having a demand as aforesaid, instead of [illegible]

5. Any plaintiff wishing to institute suit against a boat [illegible]

[illegible]

18. In all cases arising under this act, if judgment shall have been rendered in favor of a plaintiff, the master, agent, owner or consignee of the boat or vessel, or other person interested, may appeal from the judgment, as if they or either of them had been made.

19. All actions against a boat or vessel, under the provisions of this act, shall be commenced and tried within [illegible] days after the cause of such action shall have been accrued.

JOHN BIGLER,
Speaker of the Assembly.
JOHN M'DOUGAL,
Lieutenant-Governor and President of the Senate.
Approved, April [illegible], 1850.
PETER H. BURNETT.

Office of Secretary of State,
San Jose, May [illegible], 1850.

I hereby certify that the foregoing is a true copy of an original act now on file in this office.

WM. VAN VOORHIES,
Secretary of State.

BOAT FOUND.

PICKED UP, on the [illegible] inst., one flat bottom boat, about [illegible] feet long, with a centre board, painted [illegible]. The owner can have the same by proving property and paying charges, on application to [illegible]

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